

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PAUL SAMUEL JOHNSON,
Plaintiff,
v.
MELLISA MCKINNEY, et al.,
Defendants.

Case No.: 12-02924 CW (PR)

ORDER DENYING LEAVE TO PROCEED
IN FORMA PAUPERIS; DIRECTING
PLAINTIFF TO FILE COMPLETED
NON-PRISONER IN FORMA PAUPERIS
APPLICATION AND DENYING MOTION
FOR APPOINTMENT OF COUNSEL

(Docket nos. 2, 14)

Plaintiff filed the present pro se civil rights action and application seeking leave to proceed in forma pauperis (IFP) when he was incarcerated at the California State Prison - Solano. Thereafter, when Plaintiff informed the Court that he was going to be released, the Court directed him either to pay the filing fee or file a non-prisoner IFP application. Docket no. 7. Plaintiff was not released at that time; consequently, he filed a new prisoner IFP application. Docket no. 14. Subsequently, Plaintiff was released and no longer is incarcerated.

Ordinarily, a plaintiff is permitted to file a civil action in federal court without prepayment of fees or security if he alleges in an affidavit that he is unable to pay such fees or give security therefor. See 28 U.S.C. § 1915(a). But, if the plaintiff is a prisoner who alleges that he is unable to pay the full filing fee at the time of filing, he will be required to pay the full amount of the filing fee even if he is granted IFP status. See 28 U.S.C. § 1915(b)(1). This is done by way of an "installment plan," whereby the court will assess an initial payment, and the prisoner will be required thereafter to make

1 monthly payments of twenty percent of the preceding month's income
2 credited to his prison trust account. See id.

3 If a prisoner is released, however, the court will be unable
4 to collect the funds from his prisoner trust account as required
5 under 28 U.S.C. § 1915(b). Consequently, because Plaintiff has
6 been released from custody, he now must apply to proceed IFP under
7 the general provisions of 28 U.S.C. § 1915(a)(1).

8 Accordingly, the Court orders as follows: Plaintiff's request
9 to proceed IFP based on his prisoner IFP application is DENIED.
10 No later than fourteen days from the date of this Order, Plaintiff
11 either shall (1) pay the \$350.00 filing fee in this action, or
12 (2) file a completed non-prisoner IFP application. If Plaintiff
13 fails to comply with this Order, the case will be dismissed
14 without prejudice. The Clerk of the Court shall provide Plaintiff
15 with a non-prisoner IFP application.

16 Additionally, Plaintiff's motion for the appointment of
17 counsel is DENIED as premature. The Court will not consider any
18 motion for the appointment of counsel unless and until the
19 complaint is ordered served.

20 It is Plaintiff's responsibility to prosecute this case. He
21 must keep the Court informed of any change of address and must
22 comply with the Court's orders in a timely fashion. Failure to do
23 so may result in the dismissal of this action for failure to
24 prosecute pursuant to Rule 41(b) of the Federal Rules of Civil
25 Procedure.

26 This Order terminates Docket nos. 2 and 14.

27 IT IS SO ORDERED.

28 Dated: 12/4/2012


CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE